UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/287,631	04/07/99	EBY J	03063.0396-0

IM22/1001

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EXAMINER	
KUHNS,A	
ART UNIT	**PAPER NUMBER**
1732	7

DATE MAILED: 10/01/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/287,631	Applicant(s) EBY ET AL.
	Examiner KUHNS	Group Art Unit 1732

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disp sition of Claims

☒ Claim(s) 9-10 AND 21-32 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 9-10 AND 21-32 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachm nt(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Acti n Summary

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 9-10 and 21-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust et al. Faust et al. disclose the basic claimed method of forming a surface covering including (1) providing a surface covering including a backing layer, a foamable layer located atop the backing layer and a design layer located atop the foamable layer and having a design, wherein a portion of the design includes a pattern with at least one retarder or inhibitor composition (column 4, lines 38-42 and column 5, lines 5-48), (2) providing a wear layer on top of the design layer and curing the wear layer, thereby expanding the foamable layer to form a foam layer, and (3) mechanically embossing and setting a surface texture on the wear layer (one of ordinary skill in the art would recognize that mechanically embossing the sheet (column 5, lines 30-31) would cause an embossment to appear on the wear layer). Faust et al. teach chemical blowing at column 3, lines 11-54 and the use of inhibitors at column 4, lines 38-42. This is at least suggestive of chemical embossing, as in claims 9, 21 and 27, and practicing such embossing would have been obvious to one of ordinary skill in the art in order to produce additional variations in possible designs, as noted at column 4, lines 41-42. Note that columns 2-3 of Nairn et al. (3,293,108), cited of interest, more explicitly describes the effect of the use of inhibitor.

Providing a temperature sufficient to soften a layer prior to mechanical embossing, as in claims 9 and 23, is well known and such would have been obvious to one of ordinary skill in the art in order to expediently conduct this portion of the process. Coating an embossed layer, as in claims 10 and 29, is well known and would have been obvious in order to provide a protective surface.

While Faust et al. teach mechanical embossing before cooling, at column 7, lines 14-15, such cooling, as in claims 24 and 30, followed by subsequent heating, as in claim 31, are also well known and would have been obvious to one of ordinary skill in the art in situation where additional energy consumption caused by reheating is not of concern.

Faust et al. teach the aspect of foaming or expanding during curing, as in claim 25, at column 5, lines 24-26. Appropriate temperatures, as in claims 26 and 32, would have been readily determined through routine experimentation by one of ordinary skill in the art, based on physical properties of the layers being formed.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (703) 308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Silbaugh, can be reached on (703) 308-3829. The fax phone number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Allan R. Kuhns

ALLAN R. KUHNS
PRIMARY EXAMINER
~~GROUP 1300~~ AU 1732
9-30-99